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SENATE BILL 612

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

William E. Sharer

AN ACT

RELATING TO STATE FINANCES; ENACTING THE ECONOMIC STIMULUS
BONDING ACT; AUTHORIZING THE NEW MEXICO FINANCE AUTHORITY TO
ISSUE ECONOMIC STIMULUS ANTICIPATION BONDS; CREATING A SPECIAL
FUND CONSISTING OF GROSS RECEIPTS TAX DISTRIBUTIONS;
AUTHORIZING THE INVESTMENT OF THE SEVERANCE TAX PERMANENT FUND
IN ECONOMIC STIMULUS ANTICIPATION BONDS; MAKING AN
APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] SHORT TITLE. -- Sections 1
through 9 of this act may be cited as the "Economic Stimulus
Bonding Act".

Section 2. [NEW MATERIAL] FINDINGS AND PURPOSE. --

A. The legislature finds that:

(1) the tax decrease effected by the enactment

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1 of Bill of the first session of the forty-sixth legislature
2 will provide a long-term economic stimulus to the economy of
3 the state with a resulting increase in state revenues; however,
4 the short-term impact of the tax decrease will be detrimental
5 to general fund balances;

6 (2) the increase in state revenues over the
7 long-term can be expected to far exceed the short-term
8 detrimental impact on the general fund; and

9 (3) investment of the severance tax permanent
10 fund at differential rates in order to avoid adverse short-term
11 effects on the general fund and maintain state services at a
12 high level will help to stimulate the economy and is a proper
13 investment for the fund.

14 B. The purpose of the Economic Stimulus Bonding Act
15 is to invest the severance tax permanent fund in bonds, the
16 proceeds of which shall be used to avoid short-term detrimental
17 impacts caused by the tax decrease and to pay for the bonds
18 with distributions from a special fund composed of
19 distributions of gross receipts tax revenue that reflect a
20 portion of the increased revenues that will result from lower
21 tax rates.

22 Section 3. [NEW MATERIAL] NEW MEXICO FINANCE AUTHORITY TO
23 ISSUE ECONOMIC STIMULUS ANTICIPATION BONDS--APPROPRIATION OF
24 PROCEEDS--CONTINGENCY. --

25 A. The New Mexico finance authority is authorized

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1 to issue and sell revenue bonds, known as "economic stimulus
2 anticipation bonds" in an amount not to exceed five hundred
3 million dollars (\$500,000,000), payable solely from the
4 economic stimulus anticipation bonding fund, in compliance with
5 the Economic Stimulus Bonding Act when the secretary of finance
6 and administration certifies that the bond proceeds are needed
7 to offset short-term detrimental effects caused by the
8 enactment of Bill of the first session of the forty-sixth
9 legislature and certifies the amount of bond proceeds needed.

10 B. The net proceeds from the economic stimulus
11 anticipation bonds, after reimbursing the New Mexico finance
12 authority for the costs of issuance, are appropriated to the
13 tax-cut impact mitigation fund to be appropriated by the
14 legislature for purposes consistent with the purpose of the
15 Economic Stimulus Bonding Act.

16 C. The authorization made in Subsection A of this
17 section is contingent upon the enactment into law of the Bill
18 of the first session of the forty-sixth legislature.

19 Section 4. [NEW MATERIAL] ECONOMIC STIMULUS ANTICIPATION
20 BONDING FUND CREATED--MONEY IN THE FUND PLEDGED.--

21 A. The "economic stimulus anticipation bonding
22 fund" is created as a special fund within the New Mexico
23 finance authority. The fund shall be administered by the New
24 Mexico finance authority as a special account. The fund shall
25 consist of money appropriated and transferred to the fund and

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1 gross receipts tax revenues distributed to the fund by law.
2 Earnings of the fund shall be credited to the fund. Balances
3 in the fund at the end of any fiscal year shall remain in the
4 fund, except as provided in this section.

5 B. Money in the economic stimulus anticipation
6 bonding fund is pledged for the payment of principal and
7 interest on all economic stimulus anticipation bonds issued
8 pursuant to the Economic Stimulus Bonding Act. Money in the
9 fund is appropriated to the New Mexico finance authority for
10 the purpose of paying debt service on the economic stimulus
11 anticipation bonds and the expenses incurred in the payment and
12 administration of the bonds.

13 C. On the last day of January and July of each
14 year, the New Mexico finance authority shall estimate the
15 amount needed to make debt service and other payments during
16 the next twelve months from the economic stimulus anticipation
17 bonding fund on the economic stimulus anticipation bonds issued
18 pursuant to the Economic Stimulus Bonding Act plus the amount
19 that may be needed for any required reserves. The New Mexico
20 finance authority shall transfer to the general fund any
21 balance in the economic stimulus anticipation bonding fund
22 above the estimated amounts.

23 D. Any balance remaining in the economic stimulus
24 anticipation bonding fund shall be transferred to the general
25 fund upon certification by the New Mexico finance authority

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1 that:

2 (1) the secretary of finance and
3 administration and the New Mexico finance authority have agreed
4 that the economic stimulus anticipation bonds issued pursuant
5 to the Economic Stimulus Bonding Act have been retired, that no
6 additional obligations of the economic stimulus anticipation
7 bonding fund exist and that no additional expenditures from the
8 fund are necessary; or

9 (2) a court of jurisdiction has ruled that the
10 economic stimulus anticipation bonds have been retired, that no
11 additional obligations of the economic stimulus anticipation
12 bonding fund exist and that no additional expenditures from the
13 fund are necessary.

14 E. The economic stimulus anticipation bonds issued
15 pursuant to the Economic Stimulus Bonding Act shall be payable
16 solely from the economic stimulus anticipation bonding fund or,
17 with the approval of the bond holders, such other special funds
18 as may be provided by law and do not create an obligation or
19 indebtedness of the state within the meaning of any
20 constitutional provision. No breach of any contractual
21 obligation incurred pursuant to that act shall impose a
22 pecuniary liability or a charge upon the general credit or
23 taxing power of the state, and the bonds are not general
24 obligations for which the state's full faith and credit is
25 pledged.

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1 F. The state does hereby pledge that the economic
2 stimulus anticipation bonding fund shall be used only for the
3 purposes specified in this section and pledged first to pay the
4 debt service on the economic stimulus anticipation bonds issued
5 pursuant to the Economic Stimulus Bonding Act. The state
6 further pledges that any law authorizing the distribution of
7 taxes or other revenues to the economic stimulus anticipation
8 bonding fund or authorizing expenditures from the fund shall
9 not be amended or repealed or otherwise modified so as to
10 impair the bonds to which the economic stimulus anticipation
11 bonding fund is dedicated as provided in this section.

12 Section 5. [NEW MATERIAL] ECONOMIC STIMULUS ANTICIPATION
13 BONDS--FORM- EXECUTION. --

14 A. The New Mexico finance authority shall determine
15 at its discretion the terms, covenants and conditions of
16 economic stimulus anticipation bonds, including date of issue,
17 denominations, maturities, rate or rates of interest, call
18 features, call premiums, registration, refundability and other
19 covenants covering the general and technical aspects of the
20 issuance of the bonds except:

21 (1) the bonds shall bear interest at
22 differential rates pursuant to Section 7-27-5 NMSA 1978 rather
23 than market rates;

24 (2) the bonds shall have a maturity of no more
25 than thirteen years from the date of issue;

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1 (3) the bonds shall provide that debt service
2 payments shall not be due within three years from the date of
3 issue;

4 (4) the bonds shall provide for prepayment in
5 part or in full of the balance due at any time without penalty;
6 and

7 (5) as otherwise specifically provided in the
8 Economic Stimulus Bonding Act.

9 B. The economic stimulus anticipation bonds shall
10 be in such form as the New Mexico finance authority may
11 determine, and successive issues shall be identified by
12 alphabetical, numerical or other proper series designation.

13 C. Economic stimulus anticipation bonds shall be
14 signed and attested by the secretary of the New Mexico finance
15 authority and shall be executed with the facsimile signature of
16 the chairman of the New Mexico finance authority and the
17 facsimile seal of the New Mexico finance authority, except for
18 bonds issued in book entry or similar form without the delivery
19 of physical securities. Any interest coupons attached to the
20 bonds shall bear the facsimile signature of the secretary of
21 the New Mexico finance authority, which officer, by the
22 execution of the bonds, shall adopt as his own signature the
23 facsimile thereof appearing on the coupons. Except for bonds
24 issued in book entry or similar form without the delivery of
25 physical securities, the Uniform Facsimile Signature of Public

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1 Officials Act shall apply, and the New Mexico finance authority
2 shall determine the manual signature to be affixed on the
3 bonds.

4 Section 6. [NEW MATERIAL] ECONOMIC STIMULUS ANTICIPATION
5 BONDS--SALE.--Economic stimulus anticipation bonds may be sold
6 only at a private sale and only to the state investment
7 officer.

8 Section 7. [NEW MATERIAL] ECONOMIC STIMULUS BONDING ACT
9 IS FULL AUTHORITY FOR ISSUANCE OF BONDS--SUIT TO COMPEL
10 PERFORMANCE.--

11 A. The Economic Stimulus Bonding Act shall, without
12 reference to any other act of the legislature, be full
13 authority for the issuance and sale of economic stimulus
14 anticipation bonds, which bonds shall have all the qualities of
15 investment securities under the Uniform Commercial Code and
16 shall not be invalid for any irregularity or defect or be
17 contestable in the hands of bona fide purchasers or holders
18 thereof for value.

19 B. Any holder of economic stimulus anticipation
20 bonds or any person or officer being a party in interest may
21 sue to enforce and compel the performance of the provisions of
22 the Economic Stimulus Bonding Act.

23 Section 8. [NEW MATERIAL] DETERMINATION OF EXCESS
24 REVENUES--PREPAYMENT.--

25 A. As soon as practicable after October 1, 2004 and
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1 October 1 of each subsequent year in which any economic
2 stimulus anticipation bonds remain outstanding, the secretary
3 of finance and administration shall:

4 (1) subtract five percent of the general fund
5 appropriations made for expenditure in the prior fiscal year
6 from the unencumbered or unexpended balances of general fund
7 revenues remaining at the end of that prior fiscal year; and

8 (2) transfer twenty-five percent of the amount
9 calculated pursuant to Paragraph (1) of this subsection to the
10 economic stimulus anticipation bonding fund.

11 B. Immediately upon a transfer made pursuant to
12 Subsection A of this section, the New Mexico finance authority
13 shall use the entire amount transferred to make prepayments on
14 outstanding economic stimulus anticipation bonds.

15 Section 9. [NEW MATERIAL] TAX-CUT IMPACT MITIGATION
16 FUND--PURPOSE. --The "tax-cut impact mitigation fund",
17 consisting of proceeds from the sale of economic stimulus
18 anticipation bonds, is created in the state treasury. The fund
19 shall be subject to appropriation by the legislature to
20 mitigate adverse short-term effects of the tax decrease
21 resulting from the enactment into law of Bill of the first
22 session of the forty-sixth legislature. Balances in the fund
23 shall not revert. Upon certification by the New Mexico finance
24 authority that all economic stimulus anticipation bonds have
25 been retired, any unexpended or unencumbered balance remaining

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1 in the fund shall be transferred to the general fund.

2 Section 10. A new section of the Tax Administration Act
3 is enacted to read:

4 "[NEW MATERIAL] DISTRIBUTION--ECONOMIC STIMULUS BONDING
5 FUND--GROSS RECEIPTS TAX.--Upon certification by the secretary
6 of the New Mexico finance authority to the secretary of
7 taxation and revenue that economic stimulus anticipation bonds
8 have been issued pursuant to the Economic Stimulus Bonding Act
9 and that debt service on the bonds is due within the next
10 twelve months, a distribution pursuant to Section 7-1-6.1 NMSA
11 1978 shall be made to the economic stimulus anticipation
12 bonding fund in the amount of five million five hundred
13 thousand dollars (\$5,500,000) from the net receipts
14 attributable to the gross receipts tax imposed by the Gross
15 Receipts and Compensating Tax Act. The distribution shall be
16 made:

17 A. after the required distribution pursuant to
18 Section 7-1-6.4 NMSA 1978;

19 B. contemporaneously with other distributions of
20 net receipts attributable to the gross receipts tax for payment
21 of debt service on outstanding bonds or to a fund dedicated for
22 that purpose; and

23 C. prior to any other distribution of net receipts
24 attributable to the gross receipts tax."

25 Section 11. Section 7-27-5 NMSA 1978 (being Laws 1983,
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1 Chapter 306, Section 7, as amended) is amended to read:

2 "7-27-5. INVESTMENT OF SEVERANCE TAX PERMANENT FUND. -- The
3 severance tax permanent fund shall be invested for two general
4 purposes, to provide income to the fund and to stimulate the
5 economy of New Mexico, preferably on a continuing basis. The
6 investments in Sections 7-27-5.1 and 7-27-5.6 NMSA 1978 shall
7 be those intended to provide maximum income to the fund and
8 shall be referred to as the market rate investments. The
9 investments permitted in Sections 7-27-5.3 through 7-27-5.5,
10 7-27-5.13 through 7-27-5.17, 7-27-5.22 and 7-27-5.24 through
11 [~~7-27-5.26~~] 7-27-5.27 NMSA 1978 shall be those intended to
12 stimulate the economy of New Mexico and shall be referred to as
13 the differential rate investments. The prudent man rule shall
14 be applied to the market rate investments, and the state
15 investment officer shall keep separate records of the earnings
16 of the market rate investments. All transactions entered into
17 on or after July 1, 1991 shall be accounted for in accordance
18 with generally accepted accounting principles. "

19 Section 12. A new section of the Severance Tax Bonding
20 Act, Section 7-27-5.27 NMSA 1978, is enacted to read:

21 "7-27-5.27. [NEW MATERIAL] ECONOMIC STIMULUS ANTICIPATION
22 BONDS. -- Subject to the approval of the state investment
23 council, the severance tax permanent fund may be invested in
24 economic stimulus anticipation bonds issued by the New Mexico
25 finance authority pursuant to the Economic Stimulus Bonding

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